Barnier, Bureaucracy and Brexit – a Test for Juncker's 'Political' Commission

Kenneth Armstrong 2018-09-12T14:28:44

At first sight, it may neither be easy nor obvious to assimilate the conduct of the Brexit negotiations to the idea of a 'political Commission'. After all, one of the principal manifestations of this concept is the capacity of the Commission's President to organise the College of Commissioners and to allocate tasks amongst its members.

Michel Barnier is not a Commissioner; France already has its Commissioner. Barnier's method of appointment was not that of a Commissioner; he was not nominated by a national government and his appointment was not subject to oversight and approval by the European Parliament.

Instead, Barnier was appointed directly by President Juncker to lead negotiations by the European Commission acting as the Union's negotiator under the Article 50 TEU withdrawal process. As the Press Release accompanying Barnier's appointment notes, as well as having the title of 'Chief Negotiator' for the Union, Barnier has the formal status of a Director-General. His appointment as a Director-General of an ad hoc service is formally an aspect of the internal allocation of senior administrative roles within the Commission, albeit outside of the mainstream organisation of directorates-general. On this reading, Barnier is simply a powerful technocrat leading a negotiation process that – in the end – will need to be signed off politically by the Council and the European Parliament.

And yet – beyond formal designations – Barnier's position is more akin to that of a Commissioner. Not only was that a role he previously exercised – and so, perhaps, from a status and personal point of view, certain expectations and privileges continue to attach – it is clear that Barnier's line of political responsibility goes back to President Juncker to whom Barnier reports. On behalf of the Commission, it is Barnier who attends plenary sessions of the European Parliament to brief MEPs about the negotiations, and – together with President Juncker – he attends meetings of the European Council in its EU27 formation to inform national leaders about the progress of talks. As far as the responsibilities of a Director-General go in terms of the management of a department or a service, it is more likely that Barnier's Deputy Sabine Weyland – a Deputy Director-General – will perform that sort of function, leaving Barnier as the political leader of the task force.

And so a different reading would see Barnier's position as a rather better dramatization of the idea of a political Commission than the quotidian management of the College of Commissioners delivering on the President's priorities. Indeed, the leading role played by Barnier and the European Commission in managing Brexit may suggest a 'new supranationalism' driven by a political Commission keen to show that it has the capacity to respond to crises. As John Peterson suggests it is this aspect of the political Commission – the counterweight to the 'new intergovernmentalism' that can be found in the role played by the European Council in crisis management – which may be of importance.

Appointing an agile Heavyweight

This manifestation of a political Commission has two aspects – personal and organisational.

At a personal level, the appointment of Barnier to lead the negotiations – rather than either Juncker himself or one of his team of national-nominated Commissioners – highlights a kind of political patronage exerted by President Juncker. And the choice of Barnier – a former Commissioner with experience of, and commitment to, the operation of the European Single Market may also have been an overt political signal to the UK that the EU would seek to defend the integrity of its Single Market and the balance of rights and responsibilities that membership of that market entails. In this way – and free from the selection process for the appointment of Commissioners and the haggling that accompanies the distribution of portfolios – Juncker was able to install a heavyweight political figure at the heart of the Brexit negotiations and to signal to the UK that the EU would robustly defends its interests.

It is true that Barnier is acting as a Union negotiator operating under European Council Guidelines and Council negotiating directives. In that respect, the European Commission is accountable to the Council and the European Council for the conduct of the negotiations. Barnier and his team need to work with the *ad hoc* Working Party that ensures on behalf of the Council and the Member States that the negotiations remain in line with the mandate given to the Commission. Nonetheless, while the Commission must account to the other institutions for the progress of negotiations, at a personal level, Barnier's line of accountability and reporting is upwards to the President, as well as outwards to the media and the public in the EU's management of its public relations.

At an organisational level, the establishment of the task force that Barnier leads – Task Force 50 ('TF50') – exemplifies a kind of administrative agility needed by President Juncker in order to exert Commission influence, especially beyond the routine of day-to-day policymaking carried out by the traditional DGs of the Commission. Recall also that it was a task force that was established to take charge of negotiations between the European Commission and the UK Government ahead

of the 2016 referendum. That task force was headed by a career Commission official and Director-General, Sir Jonathan Faull. So when we combine the organisational aspect with the personal aspect, we may conclude that Barnier's leadership of TF50 is much more obviously an illustration of a political Commission than we might have assumed at the start.

Exercising Politics in a Bureaucratic Guise

And yet perhaps what is more significant is the ambiguity of the Commission's and Barnier's position: the slippage between the technocratic and the political, or the exercise of politics in a bureaucratic guise.

The European Commission has presented its conduct of the negotiations as an orderly, technical and legally-constrained process. After all, the basic structure of the negotiations is laid down in Articles 50 TEU and 218 TFEU. Nonetheless, the Commission successfully controlled the timing and sequencing of different phases of the negotiations in a way that sought to give the Commission maximum leverage in the talks. This has given the UK and the EU a rather limited amount of time in which to discuss the future relationship between the UK and the EU. The European Commission has also continually emphasised that Article 50 is not a legal basis for that future relationship which can only be determined once the UK has left the EU.

The UK, on the other hand, views the Commission's conduct of the negotiations as lacking flexibility – or worse, as selectively flexible – that prevents talks focusing on a full range of interconnected issues. For example, resolution of the issue of the border on the island of Ireland – an issue for Phase I of the talks – could never be finally determined until the UK and the EU discussed and agreed a new trade relationship.

As regards the future trade relationship, the EU has used the UK's own 'red lines' to rule out different models of cooperation. In a famous graphic that Barnier presented to the EU27, the Commission sought to show that a CETA-style agreement was the only logical consequence of Prime Minister May's approach to Brexit (prior to her more recent 'Chequers Plan'). While the Commission may well be right to suggest that choices made by the UK have consequences for the type of relationship to which the EU might agree, the illusion of the graphic is that the Commission has no choice in how it responds.

Pinning Hopes on the Endgame

If the UK is frustrated by what it views as politics disguised as bureaucracy or 'legalism', it holds on to the prospect that Barnier and the Commission will be reined in by the Member States. The UK may be pinning its hopes on the idea that even a political Commission and a new supranationalism will ultimately yield and bend to the will of the governments of the EU27 and the politics of intergovernmentalism.

The heightened discussion in UK politics of a ‘No Deal’ Brexit – with Barnier and the Commission held responsible for such an outcome – may be a tactic by the UK to sideline the Commission and to appeal directly to the European Council to take control to avoid both the UK and the EU falling off a cliff.

In this way, an informal summit of EU27 leaders in Salzburg in September followed by the formal European Council meeting in October, are pivotal not just in terms of whether Brexit will be orderly or disorderly, but in revealing whether the European Council endorses an outcome managed by the Commission, or exerts its own political authority to dictate the Brexit endgame, including setting any new guidelines for the negotiations. All of which serves to remind us that a political Commission still has to establish and maintain its position within the evolving institutional politics of the EU.

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